

93D CONGRESS  
1ST SESSION

# H. R. 856

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. MURPHY of New York introduced the following bill; which was referred to the Committee on Post Office and Civil Service

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## A BILL

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

1       *Be it enacted by the Senate and House of Representa-  
2       tives of the United States of America in Congress assembled,*

3       SECTION 1. It shall be unlawful for any officer of any  
4       executive department or any executive agency of the United  
5       States Government, or for any person acting or purporting  
6       to act under his authority, to do any of the following things:

7       (a) To require or request, or to attempt to require or  
8       request, any civilian employee of the United States serving  
9       in the department or agency, or any person seeking employ-

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1   ment in the executive branch of the United States Govern-  
2   ment, to disclose his race, religion, or national origin, or  
3   the race, religion, or national origin of any of his fore-  
4   bears: *Provided, however,* That nothing contained in this  
5   subsection shall be construed to prohibit inquiry concerning  
6   the citizenship of any such employee or person if his citizen-  
7   ship is a statutory condition of his obtaining or retaining his  
8   employment: *Provided further,* That nothing contained in  
9   this subsection shall be construed to prohibit inquiry concern-  
10   ing the national origin of any such employee when such in-  
11   quiry is deemed necessary or advisable to determine suit-  
12   ability for assignment to activities or undertakings related to  
13   the national security within the United States or to activities  
14   or undertakings of any nature outside the United States.

15       (b) To state or intimate, or to attempt to state or inti-  
16   mate, to any civilian employee of the United States serving  
17   in the department or agency that any notice will be taken of  
18   his attendance or lack of attendance at any assemblage, dis-  
19   cussion, or lecture held or called by any officer of the execu-  
20   tive branch of the United States Government, or by any per-  
21   son acting or purporting to act under his authority, or by any  
22   outside parties or organizations to advise, instruct, or in-  
23   doctrinate any civilian employee of the United States serving  
24   in the department or agency in respect to any matter or  
25   subject other than the performance of official duties to which

1 he is or may be assigned in the department or agency, or  
2 the development of skills, knowledge, or abilities which  
3 qualify him for the performance of such duties: *Provided,*  
4 *however,* That nothing contained in this subsection shall be  
5 construed to prohibit taking notice of the participation of a  
6 civilian employee in the activities of any professional group  
7 or association.

8 (c) To require or request, or to attempt to require or  
9 request, any civilian employee of the United States serving  
10 in the department or agency to participate in any way in  
11 any activities or undertaking unless such activities or under-  
12 takings are related to the performance of official duties to  
13 which he is or may be assigned in the department or agency,  
14 or to the development of skills, knowledge, or abilities which  
15 qualify him for the performance of such duties.

16 (d) To require or request, or to attempt to require  
17 or request, any civilian employee of the United States serv-  
18 ing in the department or agency to make any report con-  
19 cerning any of his activities or undertakings unless such  
20 activities or undertakings are related to the performance of  
21 official duties to which he is or may be assigned in the  
22 department or agency, or to the development of skills, knowl-  
23 edge, or abilities which qualify him for the performance of  
24 such duties, or unless there is reason to believe that the

1 civilian employee is engaged in outside activities or employ-  
2 ment in conflict with his official duties.

3 (e) To require or request, or to attempt to require or  
4 request, any civilian employee of the United States serving  
5 in the department or agency, or any person applying for  
6 employment as a civilian employee in the executive branch  
7 of the United States Government, to submit to any interroga-  
8 tion or examination or to take any psychological test which  
9 is designed to elicit from him information concerning his  
10 personal relationship with any person connected with him  
11 by blood or marriage, or concerning his religious beliefs or  
12 practices, or concerning his attitude or conduct with respect  
13 to sexual matters: *Provided, however,* That nothing con-  
14 tained in this subsection shall be construed to prevent  
15 a physician from eliciting such information or authorizing  
16 such tests in the diagnosis or treatment of any civilian  
17 employee or applicant where such physician deems such  
18 information necessary to enable him to determine whether  
19 or not such individual is suffering from mental illness: *Pro-*  
20 *vided further, however,* That this determination shall be made  
21 in individual cases and not pursuant to general practice or  
22 regulation governing the examination of employees or appli-  
23 cants according to grade, agency, or duties: *Provided further,*  
24 *however,* That nothing contained in this subsection shall be  
25 construed to prohibit an officer of the department or agency

1 from advising any civilian employee or applicant of a specific  
2 charge of sexual misconduct made against that person, and  
3 affording him an opportunity to refute the charge.

4 (f) To require or request, or attempt to require or  
5 request, any civilian employee of the United States serving  
6 in the department or agency, or any person applying for  
7 employment as a civilian employee in the executive branch  
8 of the United States Government, to take any polygraph  
9 test designed to elicit from him information concerning his  
10 personal relationship with any person connected with him  
11 by blood or marriage, or concerning his religious beliefs or  
12 practices, or concerning his attitude or conduct with respect  
13 to sexual matters.

14 (g) To require or request, or to attempt to require  
15 or request, any civilian employee of the United States serving  
16 in the department or agency to support by personal endeavor  
17 or contribution of money or any other thing of value the  
18 nomination or the election of any person or group of persons  
19 to public office in the Government of the United States or of  
20 any State, district, Commonwealth, territory, or possession  
21 of the United States, or to attend any meeting held to pro-  
22 mote or support the activities or undertakings of any political  
23 party of the United States or of any State, district, Common-  
24 wealth, territory, or possession of the United States.

1       (h) To coerce or attempt to coerce any civilian em-  
2 ployee of the United States serving in the department or  
3 agency to invest his earnings in bonds or other obligations  
4 or securities issued by the United States or any of its depart-  
5 ments or agencies, or to make donations to any institution  
6 or cause of any kind: *Provided, however,* That nothing con-  
7 tained in this subsection shall be construed to prohibit any  
8 officer of any executive department or any executive agency  
9 of the United States Government, or any person acting or  
10 purporting to act under his authority, from calling meetings  
11 and taking any action appropriate to afford any civilian em-  
12 ployee of the United States the opportunity voluntarily to  
13 invest his earnings in bonds or other obligations or securities  
14 issued by the United States or any of its departments or  
15 agencies, or voluntarily to make donations to any institution  
16 or cause.

17        (i) To require or request, or to attempt to require  
18 or request, any civilian employee of the United States  
19 serving in the department or agency to disclose any items  
20 of his property, income, or other assets, source of income,  
21 or liabilities, or his personal or domestic expenditures or  
22 those of any member of his family or household: *Provided*,  
23 *however*, That this subsection shall not apply to any civilian  
24 employee who has authority to make any final determination  
25 with respect to the tax or other liability of any person, cor-

1 poration, or other legal entity to the United States, or  
2 claims which require expenditure of moneys of the United  
3 States: *Provided further, however,* That nothing contained  
4 in this subsection shall prohibit the Department of the  
5 Treasury or any other executive department or agency of  
6 the United States Government from requiring any civilian  
7 employee of the United States to make such reports as may  
8 be necessary or appropriate for the determination of his  
9 liability for taxes, tariffs, custom duties, or other obliga-  
10 tions imposed by law.

11 (j) To require or request, or to attempt to require  
12 or request, any civilian employee of the United States  
13 embraced within the terms of the proviso in subsection  
14 (i) to disclose any items of his property, income, or  
15 other assets, source of income, or liabilities, or his personal  
16 or domestic expenditures or those of any member of his  
17 family or household other than specific items tending to  
18 indicate a conflict of interest in respect to the perform-  
19 ance of any of the official duties to which he is or may be  
20 assigned.

21 (k) To require or request, or to attempt to require or  
22 request, any civilian employee of the United States serving  
23 in the department or agency, who is under investigation for  
24 misconduct, to submit to interrogation which could lead to

1 disciplinary action without the presence of counsel or other  
2 person of his choice, if he so requests.

3 (l) To discharge, discipline, demote, deny promotion  
4 to, relocate, reassign, or otherwise discriminate in  
5 regard to any term or condition of employment of, any civil-  
6 ian employee of the United States serving in the department  
7 or agency, or to threaten to commit any of such acts, by  
8 reason of the refusal or failure of such employee to submit  
9 to or comply with any requirement, request, or action made  
10 unlawful by this Act, or by reason of the exercise by such  
11 civilian employee of any right granted or secured by this  
12 Act.

13 SEC. 2. It shall be unlawful for any officer of the United  
14 States Civil Service Commission, or for any person acting  
15 or purporting to act under his authority, to do any of the  
16 following things:

17 (a) To require or request, or to attempt to require or  
18 request, any executive department or any executive agency  
19 of the United States Government, or any officer or employee  
20 serving in such department or agency, to violate any of the  
21 provisions of section 1 of this Act.

22 (b) To require or request, or to attempt to require or  
23 request, any person seeking to establish civil service status  
24 or eligibility for employment in the executive branch of the  
25 United States Government, or any person applying for em-

1 ployment in the executive branch of the United States Gov-  
2 ernment, or any civilian employee of the United States  
3 serving in any department or agency of the United States  
4 Government, to submit to any interrogation or examination  
5 or to take any psychological test which is designed to elicit  
6 from him information concerning his personal relationship  
7 with any person connected with him by blood or marriage,  
8 or concerning his religious beliefs or practices, or concerning  
9 his attitude or conduct with respect to sexual matters: *Pro-*  
10 *vided, however,* That nothing contained in this subsection  
11 shall be construed to prevent a physician from eliciting such  
12 information or authorizing such tests in the diagnosis or  
13 treatment of any civilian employee or applicant where such  
14 physician deems such information necessary to enable him  
15 to determine whether or not such individual is suffering  
16 from mental illness: *Provided further, however,* That this  
17 determination shall be made in individual cases and not pur-  
18 suant to general practice or regulation governing the exami-  
19 nation of employees or applicants according to grade, agency,  
20 or duties: *Provided further, however,* That nothing contained  
21 in this subsection shall be construed to prohibit an officer of  
22 the Civil Service Commission from advising any civilian  
23 employee or applicant of a specific charge of sexual miscon-  
24 duct made against that person, and affording him an oppor-  
25 tunity to refute the charge.

1           (c) To require or request, or to attempt to require  
2 or request, any person seeking to establish civil service  
3 status or eligibility for employment in the executive branch  
4 of the United States Government, or any person applying  
5 for employment in the executive branch of the United States  
6 Government, or any civilian employee of the United States  
7 serving in any department or agency of the United States  
8 Government, to take any polygraph test designed to elicit  
9 from him information concerning his personal relationship  
10 with any person connected with him by blood or marriage.  
11 or concerning his religious beliefs or practices, or concerning  
12 his attitude or conduct with respect to sexual matters.

13           SEC. 3. It shall be unlawful for any commissioned officer,  
14 as defined in section 101 of title 10, United States Code, or  
15 any member of the Armed Forces acting or purporting to  
16 act under his authority, to require or request, or to attempt  
17 to require or request, any civilian employee of the executive  
18 branch of the United States Government under his authority  
19 or subject to his supervision to perform any of the acts or  
20 submit to any of the requirements made unlawful by section  
21 1 of this Act.

22           SEC. 4. Whenever any officer of any executive depart-  
23 ment or any executive agency of the United States Gov-  
24 ernment, or any person acting or purporting to act under his  
25 authority, or any commissioned officer as defined in section

1 101 of title 10, United States Code, or any member of the  
2 Armed Forces acting or purporting to act under his author-  
3 ity, violates or threatens to violate any of the provisions of  
4 section 1, 2, or 3 of this Act, any civilian employee of the  
5 United States serving in any department or agency of the  
6 United States Government, or any person applying for  
7 employment in the executive branch of the United States  
8 Government; or any person seeking to establish civil service  
9 status or eligibility for employment in the executive branch  
10 of the United States Government, affected or aggrieved by  
11 the violation or threatened violation, may bring a civil action  
12 in his own behalf or in behalf of himself and others  
13 similarly situated, against the offending officer or person in  
14 the United States district court for the district in which the  
15 violation occurs or is threatened, or the district in which the  
16 offending officer or person is found, or in the United States  
17 District Court for the District of Columbia, to prevent  
18 the threatened violation or to obtain redress against the  
19 consequences of the violation. The Attorney General shall  
20 defend all officers or persons sued under this section  
21 who acted pursuant to an order, regulation, or directive,  
22 or who, in his opinion, did not willfully violate the  
23 provisions of this Act. Such United States district court  
24 shall have jurisdiction to try and determine such civil action  
25 irrespective of the actuality or amount of pecuniary injury

1 done or threatened, and without regard to whether the  
2 aggrieved party shall have exhausted any administrative  
3 remedies that may be provided by law, and to issue such  
4 restraining order, interlocutory injunction, permanent in-  
5 junction, or mandatory injunction, or enter such other judg-  
6 ment or decree as may be necessary or appropriate to prevent  
7 the threatened violation, or to afford the plaintiff and others  
8 similarly situated complete relief against the consequences of  
9 the violation. With the written consent of any person  
10 affected or aggrieved by a violation or threatened violation  
11 of section 1, 2, or 3 of this Act, any employee organization  
12 may bring such action on behalf of such person, or may  
13 intervene in such action. For the purposes of this section,  
14 employee organizations shall be construed to include any  
15 brotherhood, council, federation, organization, union, or pro-  
16 fessional association made up in whole or in part of civilian  
17 employees of the United States and which has as one of its  
18 purposes dealing with departments, agencies, commissions,  
19 and independent agencies of the United States concerning  
20 the condition and terms of employment of such employees.

21 SEC. 5. (a) There is hereby established a Board of  
22 Employees' Rights (hereinafter referred to as the "Board").  
23 The Board shall be composed of three members, appointed  
24 by the President, by and with the advice and consent of the  
25 Senate. The President shall designate one member as Chair-

1 man. No more than two members of the Board may be of  
2 the same political party. No member of the Board shall be  
3 an officer or employee of the United States Government.

4 (b) The term of office of each member of the Board  
5 shall be five years, except that (1) of those members first  
6 appointed, one shall serve for five years, one for three years,  
7 and one for one year, respectively, from the date of enact-  
8 ment of this Act, and (2) any member appointed to fill  
9 a vacancy occurring prior to the expiration of the term for  
10 which his predecessor was appointed shall be appointed for  
11 the remainder of such term.

12 (c) Members of the Board shall be compensated at the  
13 rate of \$75 a day for each day spent in the work of the  
14 Board, and shall be paid actual travel expenses and per  
15 diem in lieu of subsistence expenses when away from their  
16 usual places of residence, as authorized by section 5703 of  
17 title 5, United States Code.

18 (d) Two members shall constitute a quorum for the  
19 transaction of business.

20 (e) The Board may appoint and fix the compensation  
21 of such officers, attorneys, and employees, and make such  
22 expenditures, as may be necessary to carry out its functions.

23 (f) The Board shall make such rules and regulations  
24 as shall be necessary and proper to carry out its functions.

25 (g) The Board shall have the authority and duty to

1 receive and investigate written complaints from or on be-  
2 half of any person claiming to be affected or aggrieved by  
3 any violation or threatened violation of this Act and to con-  
4 duct a hearing on each such complaint. Within ten days  
5 after the receipt of any such complaint, the Board shall  
6 furnish notice of the time, place, and nature of the hearing  
7 thereon to all interested parties. The Board shall render  
8 its final decision with respect to any complaint within thirty  
9 days after the conclusion of its hearing thereon.

10 (h) Officers or representatives of any Federal employee  
11 organization in any degree concerned with employment of  
12 the category in which any alleged violation of this Act  
13 occurred or is threatened shall be given an opportunity to  
14 participate in each hearing conducted under this section,  
15 through submission of written data, views, or arguments,  
16 and in the discretion of the Board, with opportunity for oral  
17 presentation. Government employees called upon by any  
18 party or by any Federal employee organization to participate  
19 in any phase of any administrative or judicial proceeding  
20 under this section shall be free to do so without incurring  
21 travel cost or suffering loss in leave or pay; and all such em-  
22 ployees shall be free from restraint, coercion, interference,  
23 intimidation, or reprisal in or because of their participation.  
24 Any periods of time spent by Government employees during

1 such participation shall be held and considered to be Federal  
2 employment for all purposes.

3 (i) Insofar as consistent with the purposes of this sec-  
4 tion, the provisions of subchapter II of chapter 5 of title 5,  
5 United States Code, relating to the furnishing of notice and  
6 manner of conducting agency hearings, shall be applicable  
7 to hearings conducted by the Board under this section.

8 (j) If the Board shall determine after hearing that a  
9 violation of this Act has not occurred or is not threatened,  
10 the Board shall state its determination and notify all inter-  
11 ested parties of such determination. Each such determina-  
12 tion shall constitute a final decision of the Board for pur-  
13 poses of judicial review.

14 (k) If the Board shall determine that any violation  
15 of this Act has been committed or threatened by any civil-  
16 ian officer or employee of the United States, the Board shall  
17 immediately (1) issue and cause to be served on such of-  
18 ficer or employee an order requiring such officer or employee  
19 to cease and desist from the unlawful act or practice which  
20 constitutes a violation, (2) endeavor to eliminate any such  
21 unlawful act or practice by informal methods of conference,  
22 conciliation, and persuasion, and (3) may—

23 (A) (i) in the case of the first offense by any  
24 civilian officer or employee of the United States, other

1       than any officer appointed by the President, by and with  
2       the advice and consent of the Senate, issue an official  
3       reprimand against such officer or employee or order the  
4       suspension without pay of such officer or employee from  
5       the position or office held by him for a period of not to  
6       exceed fifteen days, and (ii) in the case of a second  
7       or subsequent offense by any such officer or employee,  
8       order the suspension without pay of such officer or em-  
9       ployee from the position or office held by him for a  
10      period of not to exceed thirty days or order the removal  
11      of such officer or employee from such position or office;  
12      and

13           (B) in the case of any offense by any officer ap-  
14       pointed by the President, by and with the advice and  
15       consent of the Senate, transmit a report concerning such  
16       violation to the President and the Congress.

17           (l) If the Board shall determine that any violation  
18       of this Act has been committed or threatened by any officer  
19       of any of the Armed Forces of the United States, or any  
20       person purporting to act under authority conferred by such  
21       officer, the Board shall (1) submit a report thereon to the  
22       President, the Congress, and the Secretary of the military  
23       department concerned, (2) endeavor to eliminate any un-  
24       lawful act or practice which constitutes such a violation by  
25       informal methods of conference, conciliation, and persuasion,

1 and (3) refer its determination and the record in the case  
2 to any person authorized to convene general courts-martial  
3 under section 822 (article 22) of title 10, United States  
4 Code. Thereupon such person shall take immediate steps  
5 to dispose of the matter under chapter 47 of title 10, United  
6 States Code (Uniform Code of Military Justice).

7 (m) Any party aggrieved by any final determination  
8 or order of the Board may institute, in the district court of  
9 the United States for the judicial district wherein the viola-  
10 tion or threatened violation of this Act occurred, or in the  
11 United States District Court for the District of Columbia,  
12 a civil action for the review of such determination or order.  
13 In any such action, the court shall have jurisdiction to (1)  
14 affirm, modify, or set aside any determination or order made  
15 by the Board which is under review, or (2) require the  
16 Board to make any determination or order which it is author-  
17 ized to make under subsection (k), but which it has refused  
18 to make. The reviewing court shall set aside any finding,  
19 conclusion, determination, or order of the Board as to which  
20 complaint is made which is unsupported by substantial evi-  
21 dence on the record considered as a whole.

22 (n) The Board shall submit, not later than March 31  
23 of each year, to the Senate and House of Representatives,  
24 respectively, a report on its activities under this section dur-  
25 ing the immediately preceding calendar year, including a

1 statement concerning the nature of all complaints filed with  
2 it, its determinations and orders resulting from hearings  
3 thereon, and the names of all officers or employees of the  
4 United States with respect to whom any penalties have been  
5 imposed under this section.

6 (o) There are authorized to be appropriated sums nec-  
7 essary, not in excess of \$100,000, to carry out the provisions  
8 of this section.

9 SEC. 6. Nothing contained in this Act shall be construed  
10 to prohibit an officer of the Central Intelligence Agency or  
11 of the National Security Agency or of the Federal  
12 Bureau of Investigation from requesting any civilian em-  
13 ployee or applicant to take a polygraph test, or to take a  
14 psychological test, designed to elicit from him information  
15 concerning his personal relationship with any person con-  
16 nected with him by blood or marriage, or concerning his  
17 religious beliefs or practices, or concerning his attitude or  
18 conduct with respect to sexual matters; or to provide a per-  
19 sonal financial statement, if the Director of the Central  
20 Intelligence Agency or his designee or the Director of the  
21 National Security Agency or his designee or the Director  
22 of the Federal Bureau of Investigation or his designee makes  
23 a personal finding with regard to each individual to be so  
24 tested or examined that such test or information is required  
25 to protect the national security.

1        SEC. 7. Nothing contained in sections 4 and 5 shall  
2    be construed to prevent establishment of department and  
3    agency grievance procedures to enforce this Act, but the  
4    existence of such procedures shall not preclude any appli-  
5    cant or employee from pursuing the remedies established  
6    by this Act or any other remedies provided by law: *Pro-*  
7    *vided, however,* That if under the procedures established,  
8    the employee or applicant has obtained complete protection  
9    against threatened violations or complete redress for vio-  
10   lations, such action may be pleaded in bar in the United  
11   States District Court or in proceedings before the Board on  
12   Employee Rights: *Provided further, however,* That if an  
13   employee elects to seek a remedy under either section 4 or  
14   section 5, he waives his right to proceed by an independent  
15   action under the remaining section.

16       SEC. 8. If any provision of this Act or the application  
17   of any provision to any person or circumstance shall be held  
18   invalid, the remainder of this Act or the application of such  
19   provision to persons or circumstances other than those as to  
20   which it is held invalid, shall not be affected.

95<sup>th</sup> CONGRESS  
1st Session

# H. R. 856

## A BILL

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

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By Mr. MURPHY of New York

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JANUARY 3, 1973

Referred to the Committee on Post Office and Civil Service